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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAMS MEARS, individually and as successor in interest to Michael Mears; and JOANNA WYSOCKI, individually and as successor in interest to Michael Mears,

Plaintiffs.

vs.

CITY OF LOS ANGELES, a municipality; STEVEN BEUMER, an individual; JOSE PEDROZA, an individual; JONATHAN GAN, an individual; OFFICER SEFFEL, an individual; OFFICER LEW, an individual; OFFICER GIST, an individual; SGT. WILLIAMS, an individual; and DOES 8-10, inclusive.

Defendants.

CASE NO.: CV 15-08441 JAK (AJWx)
Consol. w/ CV 15-09586 JAK (AJWx)

[Assigned to the Hon. John A. Kronstadt,
United States District Judge]

**PLAINTIFFS' NOTICE OF JOINT
MOTION AND JOINT MOTION IN
LIMINE NO. 4 OF 4 TO EXCLUDE
CUMULATIVE EXPERT
TESTIMONY; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declaration of Brian T. Dunn and Exhibits 1-4 filed concurrently herewith]

Hearing:

Date: April 17, 2017
Time: 3:00 p.m.
Place: Courtroom 10B

Trial:

Date: May 2, 2017
Time: 9:00 a.m.
Place: Courtroom 10B

1 **TO THIS HONORABLE COURT, AND TO DEFENDANTS AND THEIR
2 ATTORNEYS OF RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that on April 17, 2017, at 3:00 p.m. or as soon
4 thereafter as this matter may be heard in Courtroom 10B of the United States
5 District Court for the Central District of California, Plaintiffs WILLIAM MEARS
6 and JOANNA WYSOCKI will and hereby do jointly move the Court in limine
7 seeking to exclude unnecessarily cumulative testimony from Defendants' retained
8 expert witnesses and for an order instructing Defendants and Defendants' counsel
9 and requiring counsel to advise all witnesses:

10 1. Not to attempt to convey to the jury, directly or indirectly, any of the
11 facts mentioned in this Motion without first obtaining permission of the Court
12 outside the jury's presence and hearing;

13 2. Not to make known the fact that this Motion has been filed; and

14 3. To warn and caution each of Defendants' witnesses to strictly follow
15 the same instructions.

16 Plaintiffs seek to limit the testimony of Defendants' retained expert witnesses
17 and exclude cumulative expert testimony because the probative value of that
18 testimony is substantially outweighed by the danger of unfair prejudice to Plaintiffs
19 and the presentation of cumulative evidence at trial. This Motion is made on the
20 grounds that the cumulative testimony of Defendants' retained experts is
21 inadmissible under Fed. R. Evid. 403 and is based on this Notice, the attached
22 Memorandum of Points and Authorities, the Declaration of Brian T. Dunn and
23 Exhibits filed concurrently herewith, the file and records of the within action, and
24 any such additional oral or documentary evidence as may be evaluated by the Court
25 at the hearing of this matter.

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1 **Statement of Local Rule 7-3 Compliance:** This Motion is made following
2 the conference of counsel pursuant to Local Rule 7-3, during which no resolution
3 could be reached.

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5 DATED: April 3, 2017

Respectfully submitted,

6 **THE COCHRAN FIRM CALIFORNIA**

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8 By: /s/ Brian T. Dunn

9 BRIAN T. DUNN

10 MEGAN R. GYONGYOS

11 Attorneys for Plaintiff WILLIAM MEARS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS AND SUMMARY OF ISSUES TO BE DECIDED**

3 **BY THE JURY AT TRIAL**

4 *Statement of Facts*

5 This case arises out of the use of force related death of Plaintiffs' decedent,
6 Michael Mears. On the evening of December 24, 2014, paramedics responded to the
7 apartment complex that decedent lived in after receiving a 911 call from security
8 officers at the complex who stated that decedent was injured and in need of medical
9 attention. The paramedics located decedent in the hallway on the third floor of the
10 complex. Decedent was allegedly rolling around in pieces of broken glass on the
11 floor of the hallway yelling incoherently, and was covered in his own blood. There
12 were no reports that the decedent had committed any crime or that he had threatened
13 or injured anyone. When the decedent did not respond to the paramedics' attempts
14 to communicate with him, the paramedics requested backup from the Los Angeles
15 Police Department.

16 Defendant Officer Steven Beumer and Defendant Officer Jose Pedroza
17 responded to the paramedics' request for backup and were the first officers to arrive
18 on scene. The officers did not have any information that decedent had committed a
19 crime or was in possession of any weapons. They claim that the paramedics on
20 scene informed them that decedent was having an adverse reaction to medication
21 and acting erratically.

22 Officer Beumer and Officer Pedroza ran up to the third floor of the apartment
23 complex and contacted paramedics at that location who allegedly told them that
24 decedent needed to be transported to the hospital as soon as possible. Officer
25 Beumer and Officer Pedroza observed decedent rolling around in pieces of broken
26 glass and striking the walls of the hallway. Decedent was allegedly covered in his
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1 own blood, and was yelling incoherently. Officer Beumer and Officer Pedroza told
2 decedent to stop moving, lie on his stomach, and put his hands behind his back.

3 The decedent stopped moving and Officers Beumer and Pedroza claim that
4 they approached the decedent from behind and without any warning to handcuff
5 him. When the officers were allegedly one foot away from the decedent, the
6 decedent purportedly again began moving around on the floor. Officer Beumer drew
7 his baton and struck decedent twice in the knee area while yelling at decedent, who
8 the officers claim continued to roll around on the ground and move his legs.

9 Next, Officer Beumer put his baton away, drew his pepper spray, and,
10 although this was occurring in an enclosed hallway sprayed a 5-second burst of
11 pepper spray into decedent's face. The officers then backed away from the decedent
12 and requested backup, a supervisor, a Taser, and a beanbag shotgun. Defendant
13 Officers Jonathan Gan, John Seffell, Jessicah Gist, Ken Lew, and Andrey Wilkins
14 responded to Officer Beumer and Officer Pedroza's request for backup. According
15 to the officers, decedent was still rolling around on the floor, striking the walls of
16 the hallway, and yelling incoherently at this time.

17 When the officers were approximately five feet away from decedent, Officer
18 Gan tased the decedent six times. The TASER delivered electrical charges to the
19 decedent for a total of 53 seconds.

20 After he was tased six times, the decedent was lying face down on his
21 stomach with his hands and arms underneath his chest, and Officers Beumer,
22 Pedroza, Seffell, and Gist applied their cumulative body weight to hold the
23 decedent down. Officer Beumer placed both of his knees on decedent's lower back
24 and buttocks. Officer Pedroza placed his knee on decedent's mid-back. Officer
25 Seffell applied his body weight to decedent's lower back. Officer Gist placed her
26 hands and knees on decedent's legs. Officer Pedroza struck decedent twice in the
27 shoulder blade with a closed fist. Approximately 40 seconds after decedent was
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1 handcuffed, Officer Pedroza and Officer Gist applied a Hobble Restraint Device to
2 decedent's ankles.

3 The decedent was transported to Ronald Reagan UCLA Medical Center at
4 approximately 8:50 p.m. At approximately 6:30 a.m. on December 26, 2014,
5 decedent passed away. The Los Angeles County Coroner's Office determined that
6 the cause of decedent's death was ventricular dysrhythmia, due to or as a
7 consequence of cardiac enlargement with biventricular hypertrophy and four
8 chamber dilation. Cocaine intoxication and police restraint with the use of a Taser
9 were found to be other conditions contributing but not related to the immediate
10 cause of decedent's death.

11 Officer Gan tased the decedent six separate times during the incident. The
12 first Taser activation lasted five (5) seconds. The second Taser activation lasted
13 thirty-two (32) seconds. The third Taser activation lasted three (3) seconds. The
14 fourth Taser activation lasted five (5) seconds. The fifth Taser activation lasted five
15 (5) seconds. The sixth Taser activation lasted three (3) seconds. The overall
16 combined activation time was fifty-three (53) seconds.

17 ***The Issues to Be Decided By the Jury at Trial***

18 The issues to be decided by the jury at the trial of this matter include the
19 following: (1) whether the individual Defendants unlawfully detained the decedent;
20 (2) whether the individual Defendants used excessive or unreasonable force against
21 the decedent; (3) whether the individual Defendants acted with a purpose to harm
22 unrelated to a legitimate law enforcement objective or, if actual deliberation was
23 practical, whether the individual Defendants acted with deliberate indifference; (4)
24 whether the individual Defendants unlawfully denied medical care to the decedent;
25 (5) whether the individual Defendants were negligent; (6) whether the individual
26 Defendants were integral participants in and/or failed to intervene to prevent or stop
27 the wrongful conduct of other Defendants; (7) whether Defendant City of Los
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1 Angeles had a policy of failing to adequately train its police officers that caused the
2 deprivation of the decedent's rights; (8) whether the wrongful conduct of the
3 Defendants caused the decedent's death; (9) whether punitive damages should be
4 awarded against one or more of the individual Defendants; and (10) the type and
5 amount of damages to be awarded to the decedent and to Plaintiffs.

6 **SUBJECT OF MOTION**

7 This Motion seeks to exclude unnecessarily cumulative testimony of
8 Defendants' retained medical experts, Theodore Chan, M.D., Richard Clark, M.D.,
9 Gary Vilke, M.D., and Charles Wetli, M.D. Defendants' medical experts propose to
10 offer the following opinions at trial:

11 **A. Gary Vilke, M.D.**

12 Dr. Vilke is an emergency physician and professor of emergency medicine.
13 Dr. Vilke is expected to testify that the use of the Taser, the use of pepper spray, and
14 the restraining process did not cause or contribute to the decedent's death. (*See*
15 Exhibit 1 to Declaration of Brian T. Dunn ["Dunn Decl."], Rule 26 Report of Gary
16 Vilke, M.D. ["Vilke Rule 26 Report"], at pp. 1-2.) Dr. Vilke is also expected to
17 testify that the cardiac arrest event that culminated in the decedent's death resulted
18 from "Excited Delirium Syndrome" caused by the decedent's use of cocaine, his
19 elevated potassium levels, and his underlying cardiac condition. (*See id.* at p. 3.) Dr.
20 Vilke proposes to offer the following specific opinions in this regard:

21 1. The use of the Taser on the decedent did not cause or contribute to his
22 cardiac arrest and death;

23 2. The restraint process, including the prone positioning of the decedent
24 and application of body weight to the decedent's person, did not result in asphyxial
25 death or otherwise cause or contribute to the decedent's cardiac arrest and death;

26 3. The use of pepper spray on the decedent did not cause or contribute to
27 his cardiac arrest and death;

4. The decedent had an enlarged heart that placed him at significant risk of going into sudden cardiac arrest and death; and

5. The decedent was in a state of cocaine-induced “excited delirium,” and that state, combined with the elevated potassium levels he suffered as a result of his use of cocaine and his underlying cardiac abnormalities, was the probable cause of his cardiac arrest and death. (*See id.* at pp. 5-15.)

B. Charles Wetli, M.D.

Dr. Wetli is a forensic pathologist based in New Jersey. Similar to Dr. Vilke, Dr. Wetli is expected to testify that the cause of the decedent's death was cocaine-induced "excited delirium." (*See* Exhibit 2 to Dunn Decl., Rule 26 Report of Charles Wetli, M.D. ["Wetli Rule 26 Report"], at pp. 2-3.) Dr. Wetli is also expected to testify that the actions of the individual Defendants, including the application of baton strikes, pepper spray, and the Taser, did not cause or contribute to the decedent's death. (*Id.* at p. 3.)

C. Richard Clark, M.D.

Dr. Clark is an emergency physician and professor of emergency medicine. Like Drs. Vilke and Wetli, Dr. Clark is expected to testify that the decedent was in a state of “excited delirium” and/or cocaine intoxication during the incident, and that this state contributed to his elevated potassium levels and other chemical imbalances and his death. (*See Exhibit 3 to Dunn Decl., Rule 26 Report of Richard Clark, M.D. [“Clark Rule 26 Report”], at pp 3-5, ¶¶ 8-12.*)

D. Theodore Chan, M.D.

Dr. Chan is an emergency physician at University of California San Diego (“UCSD”) Medical Center and a professor of emergency medicine. Dr. Chan is expected to testify that the decedent’s death was not caused by positional, restraint, or compression asphyxiation resulting from the manner in which he was restrained during the subject incident. (*See* Exhibit 4 to Dunn Decl., Rule 26 Report of

1 Theodore Chan, M.D. [“Chan Rule 26 Report], at p. 5.) Dr. Chan is also expected to
 2 testify that the use of pepper spray and a Taser on the decedent did not result in
 3 respiratory compromise or immediate cardiac arrest that led to the decedent’s death.
 4 (*Id.*)

5 **I. THE COURT SHOULD EXCLUDE OR LIMIT THE PROPOSED**
 6 **TESTIMONY OF DEFENDANTS’ MEDICAL EXPERTS BECAUSE IT**
 7 **IS UNNECESSARILY CUMULATIVE**

8 The Court has discretion under to exclude evidence if the probative value of
 9 the evidence is “substantially outweighed by a danger of . . . unfair prejudice . . . or
 10 needlessly presenting cumulative evidence.” Fed. R. Evid. 403. This discretion
 11 extends to duplicative or otherwise cumulative expert testimony. *See United States*
 12 *v. Alisal Water Corp.*, 431 F.3d 643, 659-60 (9th Cir. 2005); *Davis v. Mason*
 13 *County*, 927 F.2d 1473, 1484 (9th Cir. 1991).

14 The Ninth Circuit has affirmed the exclusion of cumulative expert testimony.
 15 In *United States v. Alisal Water Corporation*, the defendants called an expert
 16 witness to provide testimony about the valuation of the defendants’ water systems.
 17 *See id.* at 660. The defendants then offered the report of another expert witness that
 18 challenged the valuation findings of an accountant appointed by the court. *See id.* at
 19 659-60. The district court determined that the report was cumulative of the expert
 20 testimony that had already been received and refused to consider it in fashioning an
 21 appropriate civil penalty. *See id.* at 660. The Ninth Circuit affirmed the exclusion of
 22 the expert’s report because it was cumulative of other expert testimony and the
 23 defendants had failed to show how it was new or different from the evidence that
 24 been introduced at trial. *See id.*

25 In *Davis v. Mason County*, the district court limited the parties’ presentation
 26 of expert testimony in the area of police practices and procedures to two experts per
 27 side. *See* 927 F.2d at 1484. The defendant challenged the exclusion of its third
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1 polices practices expert, who was expected to offer testimony on the “same topic” as
2 one of other defense experts. *See id.* The Ninth Circuit affirmed the exclusion of the
3 third expert, holding that the district had not abused its discretion in excluding the
4 expert’s testimony as cumulative. *Id.*

5 California district courts have similarly excluded or limited expert testimony
6 that is duplicative, substantially overlapping, or is otherwise unnecessarily
7 cumulative. *See, e.g., Allen v. Hylands Inc.*, 2015 U.S. Dist. LEXIS 186799, at *3-4
8 (C.D. Cal. Aug. 20, 2015) (excluding expert testimony as cumulative because the
9 experts opined on many of the same topics and relied on the same or very similar
10 evidence for their opinions); *Brooks v. Munoz*, 2014 U.S. Dist. LEXIS 22992, at *2-
11 4 (S.D. Cal. Feb. 24, 2014) (excluding the proposed testimony of four experts as
12 cumulative because the testimony significantly overlapped with that of another
13 expert); *Mankins v. United States*, 2013 U.S. Dist. LEXIS 131339, at *6-8 (C.D.
14 Cal. Sept. 9, 2013) (limiting the plaintiff to two medical experts on the issues of
15 causation and prognosis because the testimony from all five of the plaintiff’s
16 designated medical experts would be “needlessly cumulative” under Rule 403);
17 *Engman v. City of Ontario*, 2011 U.S. Dist. LEXIS 66128, at *21 (C.D. Cal. June
18 20, 2011 (determining that expert testimony was cumulative where the opinions of
19 the experts overlapped substantially); *see also Moniz v. City of Delano*, 2015 U.S.
20 Dist. LEXIS 2136, at *20 (E.D. Cal. Jan. 8, 2015) (limiting the presentation of
21 experts to testimony that does not duplicate the testimony of other experts)).

22 In this case, there is a substantial and significant overlap between the opinions
23 of the four medical experts that Defendants retained to opine on the cause of the
24 decedent’s death. Three separate experts are expected to testify that the decedent
25 was in a state of cocaine-induced “excited delirium,” and that this state caused or
26 contributed to the decedent’s death. (*See Exhibit 1 to Dunn Decl.*, Vilke Rule 26
27 Report, at pp. 12-15; *Exhibit 2 to Dunn Decl.*, Wetli Rule 26 Report, at pp. 2-3;
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1 Exhibit 3 to Dunn Decl., Clark Rule 26 Report, at pp. 3-5, ¶¶ 8-12.) Three separate
2 experts are also expected to testify that the use of pepper spray and a Taser on the
3 decedent did not cause or contribute to the decedent's death. (See Exhibit 1 to Dunn
4 Decl., Vilke Rule 26 Report, at pp-1-2, 7-11; Exhibit 2 to Dunn Decl., Wetli Rule 26
5 Report, at pp. 2-3; Exhibit 4 to Dunn Decl., Chan Rule 26 Report, at pp. 4-5.) Two
6 separate experts will additionally testify that the restraint procedures utilized on the
7 decedent did not result in any asphyxiation or cardiac arrest and were not a cause of
8 or factor contributing to the decedent's death. (See Exhibit 1 to Dunn Decl., Vilke
9 Rule 26 Report, at pp. 1-2, 9-10; Exhibit 4 to Dunn Decl., Chan Rule 26 Report, at
10 pp. 3-5.)

11 This exactly the sort of overlapping and duplicative testimony that the Ninth
12 Circuit and California district courts have excluded as needlessly cumulative under
13 Rule 403. *See Alisal Water Corp.*, 431 F.3d at 659-60; *Davis*, 927 F.2d at 1484;
14 *Allen*, 2015 U.S. Dist. LEXIS 186799, at *3-4; *Brooks*, 2014 U.S. Dist. LEXIS
15 22992, at *2-4; *Mankins*, 2013 U.S. Dist. LEXIS 131339, at *6-8. This Court should
16 therefore limit expert testimony concerning: (1) cocaine-induced "excited delirium"
17 as a cause of and/or factor contributing to death; (2) the use of pepper spray as a
18 cause of and/or factor contributing to death; (3) the use of a Taser as a cause of
19 and/or factor contributing to death; and (4) the restraint process and the restraint
20 procedures utilized therein as a cause of and/or factor contributing to death such that
21 each of those topics is addressed by only one expert.

22 **II. CONCLUSION**

23 For all of the foregoing reasons, Plaintiffs respectfully request that the Court
24 grant this Motion in its entirety.

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1 DATED: April 3, 2017

Respectfully submitted,

2 **THE COCHRAN FIRM CALIFORNIA**

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4 By: /s/ Brian T. Dunn
5 BRIAN T. DUNN
6 MEGAN R. GYONGYOS
7 Attorneys for Plaintiff WILLIAM MEARS
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